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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation
Against:

THOMAS MILTON BELL, R.C.P.
1246 West Palm Avenue
Redlands, CA 92373

Respiratory Care Practitioner License No. 1915

Respondent.

Case No. 1H-2007-590

OAH No.

FIRST AMENDED ACCUSATION

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this First Amended Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about May 10, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License Number 1915 to THOMAS MILTON BELL, R.C.P. (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2009, unless renewed.

3. On or about May 12, 2008, Complainant filed a Petition for Interim Order of Suspension against Respondent. On or about June 5, 2008, Respondent entered into a

1 stipulation to an order suspending his Respiratory Care Practitioner License No. 1915.

2 **JURISDICTION**

3 4. This First Amended Accusation, which supercedes the original Accusation
4 filed on March 26, 2008, in the above entitled matter, is brought before the Respiratory Care
5 Board (Board), Department of Consumer Affairs, under the authority of the following laws. All
6 section references are to the Business and Professions Code (Code) unless otherwise indicated.

7 5. Section 118, subdivision (b), of the Code states:

8 “The suspension, expiration, or forfeiture by operation of law of a license issued
9 by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or
10 by order of a court of law, or its surrender without the written consent of the board, shall not,
11 during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board
12 of its authority to institute or continue a disciplinary proceeding against the licensee upon any
13 ground provided by law or to enter an order suspending or revoking the license or otherwise
14 taking disciplinary action against the licensee on any such ground.”

15 6. Section 3710 of the Code states in pertinent part:

16 “The Respiratory Care Board of California, hereafter referred to as the board, shall
17 enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

18 7. Section 3718 of the Code states: “The board shall issue, deny, suspend,
19 and revoke licenses to practice respiratory care as provided in this chapter.”

20 8. Section 3750 of the Code states:

21 “The board may order the denial, suspension or revocation of, or the imposition of
22 probationary conditions upon, a license issued under this chapter, for any of the following causes:

23 “...

24 “(d) Conviction of a crime that substantially relates to the qualifications,
25 functions, or duties of a respiratory care practitioner. The record of conviction or a
26 certified copy thereof shall be conclusive evidence of the conviction.

27 “...

28 “(g) Conviction of a violation of any of the provisions of this chapter or of any

1 provision of Division 2 (commencing with Section 500), or violating, or attempting to
2 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
3 violate any provision or term of this chapter or of any provision of Division 2
4 (commencing with Section 500).

5 “...”

6 9. Section 3750.5 of the Code states:

7 "In addition to any other grounds specified in this chapter, the board may deny,
8 suspend, or revoke the license of any applicant or license holder who has done any of the
9 following:

10 "(a) Obtained or possessed in violation of law, or except as directed by a licensed
11 physician and surgeon, dentist, or podiatrist administered to himself or herself, or
12 furnished or administered to another, any controlled substances as defined in Division 10
13 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug
14 as defined in Article 2 (commencing with section 4015) of Chapter 9 of this code.

15 "(b) Used any controlled substance as defined in Division 10 (commencing with
16 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in
17 Article 2 (commencing with section 4015) of Chapter 9 of this code."

18 “...”

19 “(d) Been convicted of a criminal offense involving the consumption or
20 self-administration of any of the substances described in subdivisions (a) and (b), or the
21 possession of, or falsification of a record pertaining to, the substances described in
22 subdivision (a), in which event the record of the conviction is conclusive evidence
23 thereof.

24 “...”

25 10. Section 3752 of the Code states in pertinent part:

26 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
27 made to a charge of any offense which substantially relates to the qualifications, functions, or
28 duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this

1 article. The board shall order the license suspended or revoked, or may decline to issue a license,
2 when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
3 or when an order granting probation is made suspending the imposition of sentence, irrespective
4 of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw
5 his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
6 dismissing the accusation, information, or indictment.”

7 11. California Code of Regulations (CCR), title 16, section 1399.370, states in
8 pertinent part:

9 “For the purposes of denial, suspension, or revocation of a license, a crime or act
10 shall be considered to be substantially related to the qualifications, functions or duties of a
11 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform
12 the functions authorized by his or her license or in a manner inconsistent with the public health,
13 safety, or welfare. Such crimes or acts shall include but not be limited to those involving the
14 following:

15 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
16 abetting the violation of or conspiring to violate any provision or term of the Act.

17 “...

18 “(c) Conviction of a crime involving driving under the influence or reckless
19 driving while under the influence.

20 “...”

21 12. Section 492 of the Code states:

22 “Notwithstanding any other provision of law, successful completion of any
23 diversion program under the Penal Code, or successful completion of an alcohol and drug
24 problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12
25 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
26 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in
27 that division, from taking disciplinary action against a licensee or from denying a license for
28 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a

1 record pertaining to an arrest.

2 “This section shall not be construed to apply to any drug diversion program operated by
3 any agency established under Division 2 (commencing with Section 500) of this code, or any
4 initiative act referred to in that division.”

5 **COST RECOVERY**

6 13. Section 3753.5, subdivision (a) of the Code states:

7 “In any order issued in resolution of a disciplinary proceeding before the board,
8 the board or the administrative law judge may direct any practitioner or applicant found to have
9 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
10 investigation and prosecution of the case. A certified copy of the actual costs, or a good faith
11 estimate of costs where actual costs are not available, signed by the official custodian of the
12 record or his or her designated representative shall be prima facie evidence of the actual costs of
13 the investigation and prosecution of the case.”

14 14. Section 3753.7 of the Code provides that for purposes of the Respiratory
15 Care Practice Act, costs of prosecution shall include attorney general or other prosecuting
16 attorney fees, expert witness fees, and other administrative, filing, and service fees.

17 15. Section 3753.1 of the Code states:

18 "(a) An administrative disciplinary decision imposing terms of probation may
19 include, among other things, a requirement that the licensee-probationer pay the monetary
20 costs associated with monitoring the probation.

21 **FIRST CAUSE FOR DISCIPLINE**

22 (Conviction of Crimes Substantially Related to the Qualifications, Functions, or Duties of a
23 Respiratory Care Practitioner)

24 16. Respondent is subject to discipline under section 3750, as defined by
25 sections 3750, subdivisions (d) and (g), 3750.5, subdivision (d), and 3752 of the Code, and
26 California Code of Regulation (CCR), title 16, section 1399.370, subdivisions (a) and (c), in that,
27 on two occasions, Respondent was convicted of crimes substantially related to the qualifications,
28 functions, or duties of a respiratory care practitioner. The circumstances are as follows:

1 **Conviction-January 20-, 2006**

2 A. On or about June 23, 2005, Officer K.B. responded to the Redlands Smoke
3 Shop after a witness had called the police about a white adult male who staggered and
4 stumbled from the shop and got into a late-model red convertible Volvo. Another police
5 officer, Assistant Chief H. spotted the above vehicle traveling southbound on Lakeside
6 Avenue from Olive Avenue. He followed the Volvo and observed it weave back and
7 forth and travel in the northbound lane, in the center lane, and back into the southbound
8 lane. At the four-way stop at Lakeside Avenue and Palm Avenue, the Volvo traveled
9 completely through the limit line and stopped partially into the intersection. The Volvo
10 finally stopped on Serpentine Avenue where Officer K.B. contacted the driver who was
11 seated in the vehicle. The driver identified himself as Respondent with his California
12 driver's license.

13 B. Officer K.B. noted that Respondent did not appear to have any outward
14 appearance or physical symptomatology of being under the influence of alcoholic
15 substance, nor was there any type of odor emitting from his breath. When asked whether
16 he had taken any medication in the last 24 hours, Respondent stated that he had taken
17 some psychiatric medications, one of which was Seroquel, a mood elevator for his
18 depression. Respondent also stated that he thought there was some warning against
19 driving or operating heavy machinery when taking the medication.

20 C. Officer K.B. noted that Respondent's face was red and flushed, his
21 demeanor was confused, his balance was off, and he had difficulty standing straight.
22 Respondent could not satisfactorily complete any of the standardized field sobriety tests.
23 A Preliminary Alcohol Screening (PAS) device test was negative for alcohol.

24 D. Respondent was arrested for violating California Vehicle Code (CVC)
25 section 23152(a) and transported to the Redlands Jail where he was booked. Respondent
26 submitted to blood screen test which detected the presence of Amphetamines¹ and
27

28 1. Amphetamines are potent psychomotor stimulants

1 Benzodiazepines².

2 E. On or about January 20, 2006, Respondent was convicted on his own
3 guilty plea of violating CVC 23152(a) [driving under the influence of alcoholic beverage
4 or drug] and was placed on probation.

5 **Conviction-August 27, 2008**

6 F. On or about January 10, 2008, motorist C.B. observed a silver BMW
7 traveling on Tennessee Street in the No. 2 lane just south of the IS-10 freeway. The
8 BMW swerved from the No. 2 lane halfway into the No.1 lane and back as it traveled
9 south on Tennessee Street. The BMW continued to swerve back and forth from the No. 2
10 to the No. 1 lane. As the BMW approached the intersection of Tennessee and Redlands
11 Blvd, motorist C.B. tried to pass the BMW, however, the BMW was swerving too much
12 for him to pass.

13 G. As the BMW continued south on Tennessee Street, it swerved to the right
14 and hopped up onto the sidewalk and continued southbound on the west sidewalk. The
15 BMW collided into the side of the white Sequoia that was pulling out of the parking lot at
16 251 Tennessee Street.

17 H. Officer S.S. who was called to assist with the traffic collision, made
18 contact with Respondent, the driver of the BMW. Respondent was pointed out to Officer
19 S.S. by Officer W. who was the first officer on the scene. Officer W. had observed
20 Respondent exit the BMW and walked around to the passenger side of the vehicle.
21 Officer W. asked Respondent to sit on the curb area while maintaining continuous visual
22 contact with Respondent until Officer S.S. arrived at the scene of the accident.

23 I. When Officer S.S. asked Respondent whether he had been drinking
24 alcohol, Respondent replied that had not drunk alcohol since 1989. Officer S.S. noted
25 that Respondent's eyes were twitching back and forth, that he lacked smooth pursuit
26

27 2. Benzodiazepines are a class of psychoactive drugs considered minor tranquilizers with
28 varying hypnotic, sedative, anxiolytic, anticonvulsant, muscle relaxant and amnesic properties,
which are mediated by slowing down the central nervous system.

1 following a pen, and he had vertical and horizontal gaze nystagmus and maximum
2 deviance. In addition, Respondent's pupils were constricted and glassy. Respondent
3 could not satisfactorily complete any of the standardized field sobriety tests. A
4 Preliminary Alcohol Screening (PAS) device test was negative for alcohol.

5 J. Officer S.S. also noted that Respondent seemed confused. When
6 Respondent was asked what the date was, he stated it was January 4, 2008. Officer S.S.
7 checked on Respondent's driver's license, and learned that Respondent was under
8 probation for driving under the influence of a controlled substance.

9 K. While Officer S.S. was in the process of obtaining the registration and
10 insurance information on the BMW, he found a black leather bag on the floor on the
11 passenger's side of Respondent's vehicle. Inside the bag was a Zip-lock baggie with a
12 white crystal substance. From his training and experience, Officer S.S. believed this
13 substance to be Methamphetamine. In addition, while Officer S.S. was examining the
14 contents of the black bag, a black plastic bag fell out of the inside cover of the bag. It
15 contained a glass pipe the type used for smoking Methamphetamine. He also found 3
16 more glass pipes, 2 were broken and one of the broken pipe had a white powdery
17 substance in it.

18 L. Officer S.S. further noticed a small glass bottle with a red cap on the floor
19 board of the passenger side of the BMW. Inside the bottle he could see a white powdery
20 substance. Again, based on his training and experience, he believed this to be
21 Methamphetamine. Photos were taken of the items that were found. Officer S.S. placed
22 Respondent under arrest under for violating CVC 23153(a) [driving under the influence
23 of a controlled substance] causing injury to the passenger of the other vehicle and Health
24 and Safety Code section 11377 [possession of controlled substance], and transported to
25 the Redlands Police Department.

26 M. Officer S.S. tested the white crystal substance in the Zip-lock baggie and it
27 tested positive for Methamphetamine. The Zip-lock baggie with the white crystal
28 substance weighed 9.5 grams and the glass bottle with the white powder weighed 11

1 grams. The substance in the glass bottle was not tested. While another officer was
2 inventorying the black leather bag, she looked inside a rear zipper and found another
3 plastic baggie that was torn and not sealed, and contained white crystals. Officer S.S.
4 tested the crystal and it also tested positive for Methamphetamine.

5 N. Respondent submitted to blood screen test, and while the blood was being
6 drawn, Respondent told Officer S.S. that he had been arrested for the same thing before
7 and that he has a drug problem. The blood screen test detected the presence of
8 Amphetamines.

9 O. Respondent was charged for violating CVC 23153(a) [driving under the
10 influence of a controlled substance causing injury to another] and Health and Safety Code
11 section 11377 [possession of controlled substance]. Respondent was later released on
12 bail.

13 P. On or about August 27, 2008, and pursuant to a plea bargain, Respondent
14 was convicted on his own plea of nolo contendere of violating CVC 23152(a) [driving
15 under the influence of alcoholic beverage or drug] and was placed on probation.

16 **SECOND CAUSE FOR DISCIPLINE**

17 (Conviction of a Crime Involving Driving Under the Influence or
18 Reckless Driving While Under the Influence)

19 17. Respondent is further subject to disciplinary action under section 3750, as
20 defined by sections 3750, subdivisions (d) and (g), and 3752 of the Code, and CCR, title 16
21 section 1399.370, subdivision (c), in that he was convicted of crimes involving driving under the
22 influence or reckless driving while under the influence, as more particularly described in
23 paragraph 16, above, which is incorporated by reference as if fully set forth herein.

24 **THIRD CAUSE FOR DISCIPLINE**

25 (Use of Controlled Substance)

26 18. Respondent is further subject to disciplinary action under section 3750, as
27 defined by section 3750.5, subdivision (b), of the Code, and CCR, title 16, section 1399.370,
28 subdivision (a), in that Respondent used controlled substances, to wit: amphetamines or

1 methamphetamines and benzodiazepines, as more particularly described in paragraph 16, above,
2 which is incorporated by reference as if fully set forth herein.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 (Possession of a Controlled Substance)

5 19. Respondent is further subject to disciplinary action under section 3750, as
6 defined by section 3750.5, subdivision (a), of the Code, and CCR, title 16, section 1399.370,
7 subdivision (a), in that Respondent was in possession of a controlled substance, to wit:
8 methamphetamine, as more particularly described in paragraphs 16F, 16G, 16H, 16I, 16J, 16K,
9 16L, 16M, and 16N, above, which is incorporated by reference as if fully set forth herein.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

13 1. Revoking or suspending Respiratory Care Practitioner License Number
14 1915 heretofore issued to Thomas Milton Bell, R.C.P.;

15 2. Ordering Thomas Milton Bell, R.C.P. to pay the Respiratory Care Board
16 the costs of the investigation and enforcement of this case, and if placed on probation, the costs
17 of probation monitoring;

18 3. Taking such other and further action as deemed necessary and proper.
19

20 DATED: October 6, 2008
21
22

23 Original signed by Liane Zimmerman for:
24 STEPHANIE NUNEZ
25 Executive Officer
26 Respiratory Care Board of California
27 Department of Consumer Affairs
28 State of California
Complainant

SD2008800386

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